

The Rule of Law in Peru: Beset by Corruption and the Pandemic

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On April 26, 2020, I wrote an article in this same space titled “[Quarantine, State of Emergency, State of Enforcement, and the Pandemic in Peru](#)” where I described how the coronavirus had affected the rule of law and human rights in the country. Among other points, I emphasized that, despite our institutional shortcomings and the precariousness of our healthcare system, this exceptional situation had not led to serious human rights violations or breaches of the rule of law, except in isolated cases.

It has now been a year since the beginning of this prolonged pandemic, the state of emergency ([decreed on March 15, 2020](#) and extended throughout this entire time), the various levels of confinement and restrictions on civil liberties such as freedom of movement and the right of assembly, and a severe economic recession. At this point, our balance sheet is in the red. This is not only because we reached an official death toll of 52,000 and some 1.5 million cases of [infection by March of this year](#), but also because there has been a severe weakening of institutions, which would explain—in part—why Peru is one of the countries in Latin America that has been hardest hit by COVID-19.

Political Crisis and Corruption During Pandemic

First, a political and social crisis shook the country, ending with the removal of the former President of the Republic, Martín Vizcarra, by a Congress with ulterior motives in November 2020: he was declared with “permanent moral incapacity” for alleged acts of corruption that he committed when he was Governor of Moquegua, a region in the south of the country, but the real reason behind the determination of “permanent moral incapacity” was that a group of parliamentarians wanted to occupy his position. This slowed down the Peruvian State’s negotiations with international medical laboratories and efforts to acquire vaccines against this disease, to the point that the new transitional government of President Francisco Sagasti was only able to secure the arrival of the first batch of Sinopharm vaccines from China on February 13, 2021. Compared to other Latin American countries, we have been among the last to launch a mass vaccination initiative and ensure there are enough vaccines for the entire population.

Then, the country was outraged and embarrassed by the discovery in February of this year that former President Vizcarra—while still in office and at the height of the pandemic—was secretly vaccinated along with his wife and one of his brothers with the Chinese Sinopharm vaccine, which at the time was in the experimental phase here in Peru. A few days later, it came to light that the current administration’s ministers of health and foreign affairs, several high-ranking public officials, some

executives and doctors from private clinics, as well as family and friends of all these people, were also secretly vaccinated. The ministers have resigned, but both Congress and the Public Prosecutor's Office have opened investigations to determine the possible political and criminal liability of former President Vizcarra, the former ministers, and certain other public officials.

The new ministers of health and foreign affairs have offered to thoroughly investigate, and demanded the resignation of all officials who agreed to be [vaccinated under these conditions](#). President Sagasti maintains that he was not aware of the secret vaccinations and that he feels "[furious and indignant](#)." This feeling is undoubtedly shared by most Peruvians given that, in this gripping pandemic that has cost the lives of thousands of our fellow citizens, a handful of public officials, their relatives, and friends, secretly took advantage of their position of political or economic power to get vaccinated. They did so with complete disregard for the established order of priority for vaccination: first medical, military, and police personnel, then senior citizens and at-risk persons, and so on. They acted for their own benefit and under the despicable rationale of "every man for himself."

Incredibly, the director of the medical trial that confirmed the efficacy of the Sinopharm vaccine in Peru—which was carried out at a prestigious private university whose officials and several employees have had to resign—tried to minimize the seriousness of this secret vaccination by claiming that in other countries such as the United Arab Emirates and Egypt, the Chinese pharmaceutical company had also sent an additional "courtesy" batch for the personnel and public servants involved in the clinical trial. What he failed to explain is why this selective vaccination was carried out with the utmost secrecy and benefited people who had no connection to the trial; he insisted that he is not a vaccine peddler or "[dealer](#)". A few days later, the university [removed this doctor](#) from his position.

Pending official investigations into the matter, all indications point to a [highly corrupt scheme](#) in which a handful of public officials, medical personnel, and private individuals have improperly benefited from a scarce public good, namely vaccines against COVID-19 in Peru. This not only further undermines public trust in the rule of law and government authorities, but could even jeopardize the shipment of new batches of vaccines from this or other laboratories or keep the country from being chosen again for other clinical trials.

This reprehensible behavior has further exacerbated the frustration and anger of millions of Peruvians who have lost their jobs or sources of income or who have lost family and friends. It has shattered the notion that former President Vizcarra's administration handled this pandemic to the best of its ability; we now know that he not only failed to make significant progress in acquiring vaccines but—even worse—he took advantage of his position to benefit himself and his close associates.

General Elections During Pandemic

All this has occurred amid a lackluster and atypical campaign to elect the new President of the Republic and the new Congress on April 11 of this year. [Twenty-](#)

[three presidential candidates](#) and a similar number of congressional candidates are running. This alone is a strike against these general elections since it will be difficult for voters to clearly make out the symbol for their preferred candidate or party on such a crowded ballot.

Elections will be in-person (Peru is not yet able to conduct virtual or mail-in elections), so 17 political parties have signed on to the “[2021 Electoral Ethics Pact](#)” sponsored by the National Elections Jury (JNE). Among other pledges, it urges candidates to respect social distancing rules and to observe biosafety measures to prevent campaigns and rallies from becoming new sources of infection. However, some candidates have failed to honor these commitments, holding campaign events [without social distancing and biosafety measures](#).

The institution in charge of running elections, the National Office of Electoral Processes (ONPE), has [announced the implementation of seven public health protocols](#) aimed at preventing the spread of the coronavirus: (i) mandatory use of face masks and face shields to enter polling places; (ii) mandatory temperature checks when entering polling places; (iii) hand sanitizing with alcohol-based sanitizer at polling places; (iv) maintaining at least 1.5 meters of social distance in voting lines and at polling places; (v) using your own pen to vote; (vi) disinfecting your national identity card (DNI) with alcohol; (vii) leaving the polling place immediately after voting.

In addition, the ONPE has extended voting hours from 7:00 a.m. to 7:00 p.m. (12 hours) and has established specific voting time slots: from 7:00 to 9:00 a.m. for senior citizens, pregnant women, people with disabilities, and other at-risk individuals; from 9:00 a.m. onwards, a staggered schedule has been set based on the last [digit of citizens' ID cards](#). This is expected to prevent or reduce crowds and lower the risk of transmission, but everything will depend not only on the rules established by the authorities but also on the public's compliance with these rules on Election Day.

There will be international election observers from (among others) the Organization of American States (OAS), which has been closely monitoring the political and social situation in Peru during the pandemic. The Inter-American Commission on Human Rights (IACHR) conducted an official working visit to Lima from November 29 to December 2, 2020, to investigate and document police abuses committed in November of last year during the six-day presidency of Congressman Manuel Merino. The Commission issued [press release](#) No. 290/20 on December 7, 2020, with its conclusions and recommendations to the State.

Security and Judicial System

In Peru, maintaining law and order during elections is the constitutional responsibility not only of the national police but also of the armed forces (Article 186 of the Constitution), which, throughout this long pandemic, have acted within the bounds of the constitutional framework. This was true even at the worst moments of the political and social crisis that shook the country in November 2020, culminating

not only in the removal of former President Vizcarra and the installation of the transitional government of the current President, Francisco Sagasti, but also in the short-lived and failed administration of Congressman Manuel Merino. Merino's rule lasted only six days and was met with sustained, peaceful social protests and international repudiation that forced him to resign.

The justice system has been operating “at half speed” during this protracted pandemic due to technological deficiencies in its procedures and infrastructure. Despite this, some proceedings and procedures have continued to be carried out through videoconferencing, albeit with limitations. The Prosecutor General has remained demonstrably independent in her actions and the National Justice Board (JNJ), an autonomous constitutional body responsible for the appointment, evaluation, and sanctioning of judges and prosecutors throughout the country and at all levels, after lengthy disciplinary proceedings, managed to remove the former Prosecutor General and a supreme court justice, both alleged to have been deeply involved in a corruption network now under judicial investigation.

The role of the Constitutional Court (TC) as the highest interpreter of the Constitution and final arbiter in constitutional matters is noteworthy; however, at the critical juncture of former President Vizcarra's impeachment in November 2020, the majority of the TC declined to perform that role and avoided ruling on the controversial concept of removing a president from office due to “[permanent moral incapacity](#)”, even though the entire country, political figures, and even the international community were expecting them to. The Court's questionable decision can be viewed [here](#).

Successive Extensions of State of Emergency

The state of emergency decreed by the executive branch through Supreme Decree No. 044-2020-PCM on March 15, 2020, has been successively extended through several supreme decrees. This is possible because Article 137 of the Constitution does not set time limits on this exceptional power of the President of the Republic, other than to say that a state of emergency can be decreed for a maximum of 60 days but may be extended.

Although to date neither the judiciary nor the TC has had occasion to rule on the need to establish a time limit to this exceptional power that could be exercised disproportionately and indefinitely—as happened in some regions of the country such as Ayacucho during the internal armed conflict [that ravaged Peru in the 1980s and 1990s](#) — we cannot rule out the possibility that they may eventually entertain the issue and establish limits via constitutional interpretation. Article 137 of the Constitution could also be amended in the future to more clearly define the limits of this presidential power.

For the time being, the state of emergency, which includes restrictions on the fundamental rights to freedom of movement, freedom of assembly, the inviolability of the home, and individual liberty, has been extended until February 28, 2021, by

[Supreme Decree No. 008-2021-PCM](#). It is likely to continue until the pandemic is brought under control through mass vaccination.

Despite the prolonged state of emergency throughout much of the country, there have been no human rights violations, except for a few isolated cases that were immediately reported in the press or through social media. Compared to the more severe restrictions on individual freedom imposed in 2020, people who break curfews are now detained for a maximum of four hours, must pay a fine and, if they are repeat offenders, lose their eligibility for social programs. Another successful measure taken by the current government has been to gradually impose restrictions in different geographical areas based on COVID-19 infection rates: where there are more infections, there are more restrictions; where there are fewer infections, there are fewer restrictions.

Freedom of expression and freedom of the press have not been curtailed during the pandemic and, on the contrary, the press and social media have played a key role in exposing the recent scandal known as “[vaccinegate](#)”, referred to earlier in this article.

Post Pandemic Risks

Finally, we are concerned about some particular dangers looming over Peru's fragile democracy. First, we are apprehensive about the legitimacy of the new authorities to be elected on April 11 of this year; we fear that voter absenteeism will be higher than in previous elections and that this could become another source of political and social instability. Second, we worry that mass vaccinations will not be carried out with the requisite fairness, transparency, and speed, but will instead be yet another factor contributing to social and economic inequality. In this regard, the Sagasti administration has expressed its intention to keep the COVID-19 vaccine [free of charge for the entire population](#).

Third, we are concerned that the economic recession, hunger, poverty, and unemployment resulting from this pandemic will provide fertile ground for new populist and authoritarian tendencies—whether on the right or the left—to take hold in Peru. We have many recent and regrettable experiences of this in Latin America: leaders who offer to swiftly respond to the legitimate and urgent needs of the population by taking authoritarian shortcuts that end up weakening the rule of law and generating more corruption and new human rights violations.

Under these circumstances, we trust that April 11 will be a new opportunity for Peruvians in the bicentennial (this year, 2021, Peru will celebrate 200 years as an independent and sovereign republic) to elect better and more honest leaders and to mature as a country.

